REGD. GOA - 5

PANAJI, 22ND SEPTEMBER, 1994 (BHADRA 31, 1916)

SERIES II No. 25

OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

LEGISLATURE SECRETARIAT

Notification

No. LA/A/2299/1994

The following decision dated 15th September, 1994 of the Speaker of Legislative Assembly of State of Goa given under Rule 8(1) of the Members of Goa Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986 framed under the Tenth Schedule of the Constitution of India is hereby notified and published.

Legislative Assembly of the State of Goa

Bulletin Part - II

Thursday, the 15th September, 1994/25, Bhadra/Saka — 1916.

86. The following decision dated 15th September, 1994 of the Speaker of Legislative Assembly of State of Goa given under Rule 8(2) of the Members of Goa Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986 framed under the Tenth Schedule of the Constitution of India is hereby notified and published.

"In the matter of petition filed by Shri Victor Gonsalves, M. L. A. and against 6 Members of the Goa Legislative Assembly.

COMMON ORDER

Reference No. 1/92

1. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Shri Luis Alex Cardoz, MLA — Respondent

Reference No.2/92

2. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Shri Somnath Zuwarker, MLA — Respondent

Reference No. 3/92

3. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Shri J. B. Gonsalves, MLA — Respondent

Reference No. 4/92

4. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Shri Mauvin Godinho, MLA — Respondent

Reference No. 5/92

5. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Shri Churchill Alemao, MLA — Respondent

Reference No. 6/92

6. Shri Victor Gonsalves, MLA — Petitioner
v/s.
Smt. Farrel Furtado e Gracias, MLA — Respondent

This Common order will dispose off six separate Petitions filed by the petitioner against the respondents as the facts, circumstances and issues involved in all the six cases are identical.

1. The Petitioner has filed six separate applications against the respondents under Article 191(2) read with the Tenth Schedule of the Constitution of India praying that the Respondents be declared as disqualified for being Members of the Goa Legislative Assembly in view of the fact that Dr. Luis Proto Barbosa stands disqualified as a member of the House, consequently the Respondents also stand disqualified under para 2 of the Tenth Schedule of the Constitution of India for voluntarily having given up his membership of the Indian National Congress after being elected to the House on the ticket of the Indian National Congress.

2. The Respondents were called upon to file their comments within 7 days in accordance with the provisions of Rule 7 of the Members of the Goa Legislative Assembly (Disqualification on grounds of Defection) Rules 1986. The Respondents vide letter dated 13-1-1992 requested three months time to file their comments but they are granted time upto 12th March, 1992 to file their comments.

3. On 24th March, 1990 all the above respondents alongwith Dr. Luis Proto Barbosa holding the office of the then Speaker of the Goa Legislative Assembly submitted a letter to the President of the Goa Pradesh Congress (I) Committee at Panaji tendering the respective resignations from the primary membership of the Indian National Congress (I) Party.

4. The respondents also addressed letter to the then Governor of Goa Shri Khursheed Alam Khan stating therein that they have withdrawn their support to Shri P. R. Rane as the Leader of the House and Chief Minister of Goa. The Governor of Goa vide his letter dated 24-03-90 informed Shri P. R. Rane stating that the above representatives have withdrawn their support to him as the Leader of the House and Chief Minister of Goa and they also confirmed this fact

in writing after personally meeting him on that day and 7 members have also formed a Goa people's Party with Dr. Luis Proto Barbosa as the President after resigning from primary membership of the Indian National Congress (I) Party.

5. On 25th March, 1990 Shri Eduardo Faleiro who was the President of the Goa Pradesh Congress (I) Committee accepted the resignation of all the seven members.

6. On 27th March, 1990 Shri Luizinho Faleiro, MLA elected from Navelim Constituency filed a petition for disqualification of Dr. L. P. Barbosa. The said petition was referred to Dr. K. G. Jalmi, MLA, member elected in terms of proviso to para 6(1) of the Tenth Schedule of the Constitution of India. Dr. K. G. Jalmi by his judgement and order dated 14-12-90 declared that Dr. L. P. Barbosa had become subject to disqualification under para 5 of the Tenth Schedule of the Constitution of India.

7. The contention of the petitioner is that on 24-03-90 or any time thereafter, there has not been any split in the Indian National Congress and the fact has been confirmed by the then General Secretary of AICC, Shri H. K. L. Bhagat in the letter dated 25-04-90 addressed to Dr. Wilfred D'Souza, the then Leader of Indian National Congress in the State Legislative Assembly.

8. One of the Members of the State Legislative Assembly Shri Domnick Fernandes a candidate set up by Indian National Congress and elected from Curchorem Constituency filed a petition against the 6 members name: Churchill Alemao, Luis Alex Cardoz, Somnath Zuarkar, J. B. Gonsalves, Mauvin Godinho and Farrel Furtado under the provision of the Tenth Schedule of the Constitution of India for their disqualification. The said petition was rejected by the then Hon'ble Speaker of the Goa Legislative Assembly on the technical grounds that it did not confirm with the rules of procedure under the Tenth Schedule of the Constitution of India.

9. The petitioner further states that Dr. L. P. Barbosa alongwith 6 Members resigned from Indian National Congress after their election and are not entitled to claim the benefit of exemption under proviso 3 of the Tenth Schedule of the Constitution of India more so after Dr. L. P. Barbosa has been disqualified by the Member elected under the proviso to para 6(1) of the Tenth Schedule of the Constitution of India and consequently all the above respondents stands disqualified under para 2 of the Tenth Schedule of the Constitution of India for voluntarily having given up their membership of the Indian National Congress after being elected to the House.

10. All the respondents namely: Luis Alex Cardozo, Mauvin Godinho, Somnath Zuwarkar, J. B. Gonsalves, Churchill Alemao and Farrel Furtado have filed their comments on 9-03-92, 10-03-92, 10-03-92, 10-03-92, 12-03-92 and 12-03-92 respectively. All these 6 respondents in their reply have stated that the said petition has been filed after almost two years from the date of alleged cause of action is barred by laches.

11. The respondents further stated that in their replies that the petition is barred by res-judicata or principle analogous thereto is that the petition on the same cause of action was filed by Shri Domnick Fernandes and others filed on 28-03-90 was dismissed by the then Speaker Shri Surendra Sirsat on 13-12-90. The contention of the respondent is that there was a split in the political party Congress (I) on 24-03-90. All the 6 respondent members of the Congress (I) Legislative party constituted a Group representing of faction which arose as a result of the said split and the said group consisted of not less than 1/3rd of the Members of the Congress (I) Legislature Party and therefore the respondents are not disqualified under sub-para (1) of para 2 of the Tenth Schedule of the Constitution on the grounds that they have voluntarily given up the membership of their political party. The respondents have denied that on 24-03-90 or any time thereafter there has been split in the Indian National Congress (I) and the respondents are also not aware and does not that Shri H. K. L. Bhagat wrote the alleged letter dated 25-04-90 to Dr. Wilfred D'Souza and in any event the purported letter is irrelevant, self serving and not binding on the respondents. The respondents further denied that the said members cannot claim or invoke the benefit of exemption under para 3 of the Tenth Schedule of the Constitution of India. They further denied that the disqualification of Dr. L. P. Barbosa can affect the claim of the respondents that there was a split in Congress (I) Legislative Party constituted a Group representing a faction which had arisen as a result of the said split in Congress (I) Legislative Party constituted a Group representing a faction which had arisen as a result of the said split that the said group consists of not less than 1/3rd of the Legislature Party.

Both the parties filed their proposed issues on 27-03-92 out of which the following issues were treated as the preliminary issues:

1. Whether the respondent proves that the petition is liable to be dismissed in limine for laches delay and limitation, as the petition is filed after almost two years from the date of the alleged cause of action.

2. Whether the respondent proves that the petition is barred by resjudicata or principles analogous thereto, in that a petition on the same alleged cause of action filed by Shri Domnick Fernandes, Dr. Wilfred D'Souza, Shri Victor Gonsalves (the petitioner) and others, MLAs filed on 28-03-90 was dismissed by the then Speaker, Shri Surendra V. Sirsat on 13-12-90.

3. What is the effect of the withdrawal of writ petition No. 492 of 1990 filed by Dr. Wilfred D'Souza, Leader of the Congress (I) Legislature Party who had sought the respondents's disqualification in the Supreme Court on the same alleged cause of action.

4. Whether the petition fails not complying with the provisions of the Goa Legislative Assembly (Disqualification on the ground of Defection) Rules, 1986 in that the petition and its annexures are not verified in the manner laid down in the code of Civil Procedure, 1908.

While arguing the issues the learned counsel Shri Agnel Diniz on behalf of the respondents Shri Luis Alex Cardoz, Somnath Zuwarkar, J. B. Gonsalves and Mauvin Godinho, stated that according to the petitioner the cause of action arose on 24-03-90 and the petition was filed on 4th January, 1992, that is almost after two years. For this he pointed out the disqualification law and quoted Judgement of the High Court in this matter, on the decision of the Speaker, Dr. Kashinath G. Jhalmi versus the Speaker.

The Judgement reported in 1992 Bombay case Reporter. page 113.

Further he referred to paragraph 21 of the Judgement for the purpose of issue No. 1. He stated that in the matter of representation in representative body it is of outmost importance that the challenge must be prompt and forthwith. Further the rules framed in the Extraordinary Gazette dated 17th July, 1986 in exercise of powers conferred by paragraph 8 of the Tenth Schedule of the Constitution of India read with Section 14 A of the Government of Union Territories Act, 1963 in the rules at every stage time is specified. He further stated that whenever the time is not prescribed the matters are to be dealt with by applying the doctrine of reasonableness. He laid the stress on the paragraph 8 of the Tenth Schedule, that the petition should be filed within reasonable time. There he quoted the Judgement of *the Supreme Court AIR 1987 page 1577* and relied on paragraph 6 of the said judgement. He further submitted that when there is no period of limitation prescribed under the Limitation Act, the test of reasonableness has to be adopted. He further stated that two years period that the petitioner has taken to file this Disqualification petition is not a reasonable period considering the very scheme of the Act.

While arguing the issue No. 2 the learned counsel quoted para 6 of the Tenth Schedule of the Constitution, para 6 states, if any question arises as to whether a member of the House has become subject to disqualification under this schedule the question shall be referred to the decision of the chairman, or as the case may be the Speaker of the House and his decision shall be final. In this case the question was referred by way of petition to the Speaker, Mr. Surendra Sirsat who was then the Speaker and the Speaker has pronounced his Judgement rejecting the petition.

The petition was rejected as the same was not properly verified. According to counsel for the respondent the cause of action was on 24-03-90 against all these persons before the Speaker, this same question was there, the same person had come before the Speaker and Petition filed by the same person

on the same cause faction was rejected by the then Speaker by an order dated 13th December, 1990 and the cause of action in that petition was 24-03-90.

The contention of the Counsel was that under paragraph 6 of Tenth Schedule the question can be referred to Speaker only once and the Speaker has pronounced his decision on the matter. Paragraph 6 does not contemplate continuous reference on the same matter. Reference is once and the Speaker has to decide and pronounce that the petition has been rejected. The decision becomes final with the finality attached in paragraph 6 itself otherwise the question would be that every time petition after petition would be filed and it would go on the same cause of action and that would be totally against the public policy and against the very para itself making the decision of the Speaker final otherwise what is the point in making rules saying that the petition shall be filed immediately.

While submitting the arguments on issue No. 3 of the counsel for the petition stated that in the scheme of the rules framed under the Tenth Schedule there is a party. There is a leader of the party who is defined under the rule 2 therefore the rules recognise that there is a Leader of the Legislative Party and when a disqualification petition is filed it is mandatory that a notice has to be issued to the leader under Rule 7 (3) (b). So that the Leader of the House can also make his comments. He further contended that he filed a petition in the Supreme Court of India seeking disqualification of these respondents and subsequently withdrew his petition.

On the point of issue No. 4 the (respondents) learned counsel contended that according to rule 6(6) and 6(7) every Petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleadings. Then under rule 6(7) every annexures to the petition shall also be signed by the petitioner and verified in the same manner as the petition because the annexures are an integral part of the petition under the Civil Procedure Code, the verification should either be true to your knowledge or it can be true to your information or it can be by way of legal submission. The very cause of action in Exhibit 'A' of annexure to the Petition. They do not rely on this petition. That is the cause of action. Resignation letter dated 24-3-1990 Exhibit 'B' of annexure to the petition also nothing. None of the exhibits have been verified. In this connection, he relied on *AIR 1990 Bombay Bench 1990, Page 90 — AIR 1974 Supreme Court, Page 1957.* He also pointed out a Judgement from the Administrative Tribunal on the very same point which was upheld in an election petition.

The learned counsel for the respondents Shri Radharao Gracias appearing on behalf of Shri Churchill Alemao and Smt. Farrel Furtado e Gracias submitted that general law provides for limitation for wherever there is a cause of action and redressal has to be obtained within a limited period. Tenth Schedule does not provide for the period, within which the petition has to be filed. But that does not mean that the petition can be filed at any time. It has to have same finality somewhere that is why the Limitation Act was framed. He further stated that since the term of MLAs is 5 years the limitation should have been three months or six months at the most.

On the question of issue No. 2, the counsel contended that under the scheme of the Tenth Schedule the cause of action accrues to a political party it does not accrue to an individual, he pointed out the case. The same Members including the Leader of the Congress Legislative Party made a petition and it was dismissed and once it is dismissed no other member of that party can file a petition. The party through it's agent has filed a petition which has been dismissed and therefore no second petition can be admitted. The law does not distinguish between the technicality and merits and according to him the petition was dismissed on merits.

The law does not make any difference between technical decision and decision on merits. According to the counsel, the issue has already been decided. The decision has been given under para 6 by then Speaker whose decision is final because the Speaker has given the decision, on merits. Advocate Diniz furnished the copy of the reported *Judgement of Supreme Court 1968 at page 1297 on the Doctrine of Reasonableness.*

On the other hand Advocate Mario Bruto D'Costa appearing on behalf of the petitioner submitted to note the contents of Sec. 81 of the Representation of People's Act which was enacted in 1951 and was amended in 1956, 1961 and 1966 and he further quoted Sec. 81 which reads as follows:

"An election petition calling in question any election may be presented on one or more of the grounds specified in sub-sec. Sec. 100 and Sec. 101 of Representation of People's Act to the High Court by any candidate at such election or any election within 45 days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidates at the election and the dates of the election, and the dates of the election are different, the later of those two dates.

He further submitted that Sec. 81 and the point of time at which the section was enacted and was amended is this section deals with the presentation of the petition challenging the elections and which lays down clearly in specific terms who is entitled to challenge the election, namely a candidate or any elector No. (1) and No. (2) is section 81 clearly lays down a limit within which the petition can be filed. He further contended that the Tenth Schedule of the Constitution which inserted recently, namely, much after 1966, the Legislature was fully aware that in the representation of the People's Act it provides for the procedure of presentation of petition, it had clearly laid down a time limit within which the petition had to be filed and the Legislature was fully aware that it had provided as to who is entitled to challenge an election, namely any candidate or any elector. In the Tenth Schedule the Legislature has deliberately not made any specific provision in this regard. There is no such time limit in the Tenth Schedule neither is there any such time limit under the rules which were enacted in the House.

The counsel further submitted that the respondents have not denied paras 5, 6, 7, 8 and 9 of the petition. There had to be specific denial of the allegations made in the petition. The Respondents crave leave to refer to the letters at Exhibits 'A' and 'B' for ascertaining their true meaning and effect. The case of the respondents was that they are 7 altogether and therefore they constitute a group of one-third of the Members of the particular Party in the Legislative Assembly. So therefore the disqualification of these Members was to be decided in the light of the exemption that is provided in Tenth Schedule, namely that, if one-third of the Members of a party resign from the membership of that party, they would not incur disqualifications. When the fate of the Speaker is decided, the Member know that the remaining six Members incur disqualification otherwise if the Speaker's fate is not decided, the question whether they constitute seven or more cannot be decided by the Speaker himself since he defected alongwith the group of seven.

The learned counsel further submitted that six Members claim that they form a group alongwith the Speaker. In view of the facts of this case, the new Speaker cannot decide that they constitute 1/3rd because he cannot decided on the matter of the old Speaker.

The advocate for the petitioner stated further that if the group have resigned from the party under para (2) (a) of Tenth Schedule they are disqualified. The moment a person resigns from a party that person incurs disqualification.

Advocate D'Costa contended that the issue when the Question depends upon the decision of one, namely, the Speaker the same cannot be raised. He cannot be tagged to the remaining MLAs. His disqualification has to be decided by special proceedings. So only when the Speaker is an exception to the rule relating to other MLAs, now it is only when the fate of the Speaker is determined, if the Speaker is disqualified that there will be a cause of action vis-a-vis the remaining MLAs. Which together with the Speaker would make one third. So therefore the cause of action arises in this particular case, on the date the fate of the Speaker is decided who defected alongwith the group.

He further submitted that it is possible that old Speaker would never had been disqualified. In such case the remaining six could not have been disqualified because if he has not been disqualified and he forms part of this group altogether they are one-third. But if the Speaker is disqualified and he is a part of this group, then these six persons cannot claim to fall within the exception.

They are less than one third. In that connection, therefore, the cause of action has arisen now and not on that date cause of action, this is to be noted, is a bundle of facts and the last fact which was relevant in this particular case is the decision of the fate of Speaker.

According to the counsel for the petitioner there is no requirement which has to specify the date on which cause of action has arisen and that the question of making a specific averment of the date of which cause of action arose. He further submitted that there is no need of averting because there is no limitation. There is no requirement under the law or in the rules which requires that there should be an averment on the date of which the cause of action arose.

The learned counsel replying to the issue No. 4 stated that the annexures to the petition were not properly verified for which relied on two decision.

1. *Air 1964 Supreme Court Page 1546* and quoted the head note which reads as follows:

A defect in verification in the matter of election petition is a matter which comes within Cl. (c) of Sub-S (1) of Section 83. The defect can be removed in accordance with the principles of the Code of Civil Procedure 1908 such a defect does not attract Sub-S (3) of Section 90 of CPC in as much as that a Sub-Section does not refer to non-compliance with the provisions of Section 83 as a ground for dismissing an election petition. Hence reading the relevant sections in part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings as required by Cl. (c) of Sub-S (1) of Section 83 of CPC is fatal to the maintainability of the petition on the point of question raised that the annexures are not properly verified the counsel relied upon two Supreme Court decision i.e. *Air 1968 Supreme Court Page 1079 and Air Supreme Court Page 871.*

He further pointed out that he had not challenged the verification in the petition in the course of arguments and as a matter of fact the verification in the petition is absolutely correct and there is no defect. They have challenged that the documents are not properly verified.

The Counsel stated that the respondents themselves are relying on the true meaning of the letter tendering the resignations. He further contended that since the pamphlet was an annexure to the Petition, it was not only necessary to sign and verify it, but that it should have been treated as a part of the election petition itself and a copy served upon the respondents. In this way, non compliance with the provisions of section 86(1) of CPC is made out. Since the election petition itself reproduced the whole of the pamphlet in translation in English, it could be said the averment with regard to the pamphlet was served upon the respondents although in a translation and not in original. It is quite clear that sub-section (2) of section 83 has referencc not to a document which is produced as evidence of the averments of the election petiiton which are put not in the election petition but in the accompanying Schedules or annexures. There are quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as Schedules of annexures. The details of the averments too compendious for being included in the election petition may be set out in the Schedules or annexures to the election Petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent is the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to land force to the petition are not kept back but produced or filed with the election petition.

They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far averments are concerned. The issue No. 4 was concluded by the Counsel.

While reply to issue No. 2 the counsel for the petitioner contended that this issue i. e. resjudicata arose as the petition was filed by Shri Domnick Fernandes, MLA and the same was dismissed on technical ground, namely that it did not comply with the rules. There was no decision on merits. Once a petition is dismissed on a particular cause of action, whether it is on technical defect or otherwise, that is final decision. For that matter the counsel for the petitioner relied on *Supreme Court A.I.R. 1966 Page 1332.* On section 11 of C.P.C. "In order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on merits. When for example, the former dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on ground for non-joinder of parties or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was under valued for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any) the decision not been on the merits would not be resjudicata in a subsequent suit."

The counsel further submitted that the petition was filed by Domnick Fernandes and those who have just signed there saying that I support, they are not parties to the petition So therefore in order that there should be res-judicata it has to be litigation between the same parties. The principle of res-judicata be applied in a case of a person who has knowledge about the litigation. We are on the question of res-judicata. Res-judicata is between the parties. If he is not a party to the petition the question of having knowledge will not come in the way at all. The counsel further stated that the res-judicata will arise only where a person is a party to the previous petition.

He further stated that the cause of action will arise only after the fate of Speaker is decided. So even it that petition had been decided on merits, even if the Speaker had given some reason to dismiss that petition, a cause of action would have arise. Once the fate of Speaker was decided. So, that decision cannot come in the way of fresh petition.

The cause of action would not have arisen because mere resignation from the party does not come in case of action. If they are more than one third, where is the cause of action. It would be an exercise in futility because they would come within the exemption.

He further submitted that it is the new Speaker who was to decide the fate of seven who defected by saying that there was no split, the Speaker would be deciding on breach of para 5 of Tenth Schedule because the elected member of the House would be facing a decision which had already been taken by the Speaker. The Speaker could not decide whether there was a split or not. He would not be able to decide that because one member of the seven MLAs is the Speaker and his fate is to be decided by Special Authority that is created under the Tenth Schedule.

He further submitted that the authorities are different, the jurisdictions are different. This jurisdiction of the Speaker to decide on the fate of the former Speaker and it had to be decided by the elected Member of the House.

Lastly arguing the issue No. 3 of the withdrawal of the Writ petition filed by Dr. Wilfred D'Souza in the Supreme Court the Counsel submitted that it is the petition filed before a forum that had no jurisdiction because under clause 7 of the Tenth Schedule. The Supreme Court had held that it had powers to review. But the Supreme Court has no powers to entertain an original petition. This is an original petition filed before the Supreme Court asking the court to disqualify. The Supreme Court had no jurisdiction to decide. The Supreme Court decided only that the powers to review the order of the Speaker is not taken away. Supreme Court has not arrogated to itself the power to decide on the disqualification in the first instance. So therefore Dr. Wilfred D'Souza's petition before the Supreme Court under Article 32 was petition filed before the Supreme Court under Article 32 was petition filed before a Court without jurisdiction. A petition for disqualification straight away filed in the Supreme Court is totally void.

He further submitted that the petition under 32 of the Constitution of India for declaring the Members of the Legislative Assembly as disqualified before Supreme Court was a petition filed before a Court that had no jurisdiction. That being the case, issue No. 4 has no consequences on this petition. In that connection also the question of res-judicata is probably sought to be raised by them. To give stress on this proposition the petitioner relied upon the decision of the *Andhra Pradesh High Court in AIR 1971 at page 281,* that if the former litigation was before a Court without jurisdiction even if an appeal is filed.

He referred to the Writ Petition filed by Dr. Jhalmi in the High Court where an observation is made that there was a delay and laches. Those observations are made in the light of the decisions which were cited before the High Court and which are transcribed in the decision. That principle is asserted because the matter is being adjudicated upon in writ petition and rejurisdiction it has been held that delay or laches are relevant. It is not in the context of an election petition as such.

He further contended that election law give time limit. Election Law, Representation of Peoples Act lays down the time limit to the question of saying laches and delay does not arise. Representation of Peoples Act provides 45 days time limit but in case of Tenth Schedule there is no time limit as such. The principle, that issue has come immediately without delay or laches is the principle laid down in the light of the principles so far as rejurisdiction is concerned and if the decision cited are gone through, than one can definitely come to the conclusion that this observation is made because they were exercising rejurisdiction. *The Supreme Court has held that inquiries in an election petition should be expeditious.* Hence the matter is not of inquiry.

The Counsel further contended that the 1974 decision and the decision cited again in the A.I.R. 1990 Bombay, page 90 that in an election petition in the matter of Co-operative Society was filed without supporting affidavit. So the Court said one cannot file an affidavit subsequently. The decision is not applicable to the facts of this case because here we have a petition that is properly verified so far as the other decision is concerned that is AIR 1974, Supreme Court at page 1907, cited by him again deals with verification of the petition and not of the documents.

He further cited a case of Supreme Court 1974 at page 1907 wherein if so happened that the party when making verification had not disclosed the source of information. In this case source of information has been disclosed so the verification in this case is perfectly right and it is not covered by 1974 Supreme Court. As far as the documents are concerned the law laid down by the Supreme Court is altogether different for which he relied on the two decisions which he cited earlier. The recent decision given in 1984 says that in this circumstance there is no question of verification. The decision of the Supreme Court 1984 takes care of that as far as the documents are concerned lastly he stated that there is no limitation, that the cause of action has arisen only after the disposal of the petition of the Speaker.

Advocate Agnelo Diniz while replying to the point raised by the advocate for the petitioner stated that the cause of action never arises in stages it arises on that date.

Admittedly on that date seven persons went out of the political party so it is on that date that the cause of action has arisen. So the fact that the Speaker was subsequently disqualified does not have anything to do with the constitution. He referred to the Bombay Judgement cited by him earlier, the only Judgement which conceded provisions which are para material to the provisions in the Disqualification Rules.

He further contended that under the Representation of the Peoples Act there are three provisions which has to be noticed, Firstly Section 81, Section 83, and Section 86 Section 81 needs certain things to be done for a petition. Section 83 deals with the verification part and section 86 says that if the provisions of section 81 are not complied with the petition shall be dismissed. In other words section 86 does not refer to Section 83. It says only if it has not complied with the provisions of Section 81 then the petition shall be dismissed. So it is in that context in some of the Judgement of the Supreme Court, the Supreme Court has held that non-verification or defective verification shall not be made. It is in that context, because section 83 is attracted and not section 81. A division Bench of the Bombay High Court considered provision which are para material in the Cooperative Societies Act. The Cooperative Societies Act pointed out that a petition shall be accompanied by an affidavit. The petition shall be signed and verified in the manner as in the petition. That non-verification or defective verification shall not be made. It is in that context, because section 83 is a attracted and not section 81. A division Bench of the Bombay High Court considered provisions which are para material in the Cooperative Societies Act. The Cooperative Societies Act pointed out that a petition shall be accompanied by an affidavit. The petition shall be signed and verified in the manner as in the petition. He contended that as far as the point of verification of the petition and verification of annexures, the rule says that the annexures to the petition shall be verified in the very same manner as in the petition which again says shall be verified in the manner provided in the Civil Procedure Code. The annexures to the petition are not verified at all. The annexures are interior part to the petition and the very First annexures is a letter which started the very process of this disqualification movement, that we have tendered our suggestions from the Political Party.

So that is the interior part of the Petition and if that is not verified then the whole petition is to be dismissed.

While replying to the next point the petition filed by Dr. Wilfred D'Souza be referred to prayer (c) that the above petition be entrusted to the Deputy Speaker in view of the fact that the Speaker of the House Dr. Luis Proto Barbosa being the Leader of the Goan Peoples Party and signatory to the letter besides the six members is an interested party who cannot be a Judge in his own case. So the original petition was filed in the Supreme Court because Supreme Court has no jurisdiction in the matter. It was the matter directing the Supreme Court to order the Deputy Speaker to try this petition. He withdraw petition without any anamoly whatsoever, that he can file this petition before the Speaker who has not been disqualified. After the withdrawal of the petition no other petition for disqualification was filed before the Speaker by the Leader of the House. He further submitted that as far as the party on delays was concerned he referred to the Supreme Court on the point of reasonableness. It was a question of revision. It was not a Writ Petition. Question was what is the time for filing a revision or what is the time for passing an order in revision and the Court had held when statute does not prescribe time for doing something, that has to be done within reasonable time statute itself construes certain things that should be done within reasonable time and the Supreme Court had held that a few months time would be reasonable. A reference has been made here to the Doctrine of Reasonableness has been made in connection with the disqualification petition pending over dispute. He further contended that whenever the time is not prescribed the matters are to be dealt with by applying the Doctrine of Reasonableness. This is not in connection with the writ petition. This exactly and precisely the point of disqualification. Lastly it was argued that in the matter of representation in representative body it is of utmost importance that the challenge must be prompt and forthwith. In this context, the High Court had held that even though there is no time limit, he should come within the reasonable time.

After hearing the arguments and counter arguments from the Respondents and Petitions I have come to the conclusion as follows:

As regards the issue No. 4 regarding verification I would not like to discuss much as in this particular case the petitioner's Advocate has argued that the source of information has been disclosed and does not vitiate and I am inclined to agree with him.

As regards the issues 1, 2, 3, it is pertinent to note that the cause of action arose on 24-3-1990 and petition was filed on 4-1-1992 i. e. almost after two years and that no justification is given by the petitioner for delay in filing the petition and earlier also a similar petition was dismissed on the grounds of technicalities of verification wherein the petitioner was a signatory and thereto no fresh application in proper format nor any review petition was preferred thereby showing complete lack of interest on the part of the petitioner. It is further significant to note that the

Judgement of Dr. Kashinath Jhalmi disqualifying Dr. Luis Proto Barbosa was pronounced on 14-12-1990 even at this point of time the petitioner could have filed the disqualification petition against the Respondents but it was also not done. In the famous Court Judgement Dhartipakar Madan Lal Agarwal, v/s Shri Rajiv Gandhi, Supreme Court AIR 1987 at page 1577, also speaks reasonableness of time of filing the election petition which could also be made applicable in the cases of disqualification petitions on the Tenth Schedule to decide the Doctrine of Reasonableness of time.

It may also be mentioned that the withdrawal of the Writ Petition No. 492 of 1990 in Supreme Court on the same alleged cause of action by Dr. Wilfred D'Souza the Leader of the Congress-I Legislature Party and therefore this petition amounts to Res-Judicata and therefore, I prefer to agree with the Respondent on this point also.

Therefore my findings to the issues at 1, 2, and 3 are answered in the afirmative.

As regards the arguments of the petitioner that Dr. Barbosa who has since been disqualified should not be counted to constitute a group consisting of 1/3 of the Members of Legislative Party. I am not inclined to agree with the same because the split being one time process and the subsequent disqualification of Dr. Luis Proto Barbosa cannot be taken into consideration for this purpose.

In the result all the petitions are dismissed. No order as to costs.

Sd/-

Panaji-Goa, (SHAIKH HASSAN HAROON)
Dated: 15th September, 1994. Speaker

To :

1. Shri Luis Alex Cardozo, MLA
2. Shri Somnath Zuwarkar, MLA
3. Shri J. B. Gonsalves, MLA
4. Shri Mauvin Godinho, MLA
5. Shri Churchill Alemao, MLA
6. Smt. Farrel Furtado e Gracias, MLA
7. Shri Victor Gonsalves, MLA
8. Dr. Wilfred D'Souza, Leader of Congress (I) Party, Panaji-Goa.
9. Secretary, Chief Election Commission of India, New-Delhi.
10. Chief Secretary, Government of Goa, Panaji-Goa.
11. Secretary to Governor, Goa.

Copy to:

The Chief Minister of Goa,
Panaji-Goa.

Assembly Hall, ASHOK B. ULMAN
Panaji-Goa. Secretary
15th September, 1994.

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